NO. 82-1888

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

VOLKSWAGENWERK AKTIENGESELLSCHAFT,
a Foreign Corporation,
Appellant,

vs.

JOSEPH and BARBARA J. FALZON, Individually and as Next Friend of JOSEPH D. FALZON, STEVEN FALZON, RODNEY FALZON and RAMON FALZON, minors,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

APPELLANT'S REPLY BRIEF TO A BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

BUSHNELL, GAGE, DOCTOROFF & REIZEN
GEORGE E. BUSHNELL, JR.
Counsel of Record
NOEL A. GAGE
CARL J. MARLINGA
JOHN K. PARKER
THOMAS A. HELLER
3000 Town Center, Suite 1500
Southfield, Michigan 48075

Of Counsel:
HERZFELD & RUBIN, P.C.
Herbert Rubin
Michael Hoenig
Ian Ceresney
C. Thomas Schweizer

THE INLAND PRESS, DETROIT, MICHIGAN

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
INDEX OF AUTHORITIES	ii
DISCUSSION	1
I. THE UNITED STATES' UNDERSTANDING OF THE HAGUE CONVENTION AND THE NOTES VERBALES	1
II. JURISDICTION AND "JUSTICABILITY"	2
A. Mootness and Ripeness	2
B. §1257(2) Jurisdiction	5
III. THE ALTERNATIVE PETITION FOR CERTIORARI	8
CONCLUSION	9

INDEX OF AUTHORITIES

Page

I. FEDERAL CASE LAW, CONSTITUTION AND STATUTES

A. Case Authorities

Bates v *State Bar of Arizona*, 433 US 350 (1977) ..... 7 n. 9
Calfin v *Houseman*, 93 US 130 (1876) ..... 9 n. 12
Charleston Fed. Sav. & Loan Ass'n v *Alderson*, 324 US 182 (1945) 7
Charlton v *Kelly*, 229 US 447 (1913) ..... 1 n. 1
Club Mediterranee S.A. v *Dorin, appeal filed*, 52 U.S.L.W. 3210 (U.S. Sept. 16, 1983) (No. 83-461) (Stay entered July 21, 1983, O.T. 1982, No. A-28) ..... 8 n. 10, 9
Factor v *Laubenheimer*, 290 US 276 (1933) ..... 1 n. 1
Feliciano v *Reliant Tooling Co.*, 691 F.2d 653 (3d Cir. 1982) ..... 8 n. 10
FTC v *Goodyear Tire & Rubber Co.*, 304 US 257 (1938) ..... 3-4 & nn. 2, 3
Gomez v *Perez*, 409 US 535 (1973) 7
Hanson v *Denkla*, 357 US 235 (1958) 7
In Re Griffiths, 413 US 717 (1973) ..... 7 n. 9
In Re Primus, 436 US 412 (1978) ..... 7 n. 9
Japan Lines Ltd. v *City of Los Angeles*, 441 US 434 (1979) 7
John P. King Mfg. Co. v *City Council of Augusta*, 277 US 100 (1928) 10
Kolovrat v *Oregon*, 366 US 187 (1961) ..... 1 n. 1
Lake Carriers' Ass'n v *MacMullan*, 406 US 498 (1972) ..... 4 n. 4
Lasky v *Continental Products Inc.*, 569 F. Supp. 1227 (E.D. Pa. 1983) ..... 8 n. 10
Mayer v *City of Chicago*, 404 US 189 (1971) ..... 7 n. 9
Minneapolis & St. L. R.R. v *Bombolis*, 241 US 211 (1916) ..... 9 n. 12
NAACP v *Williams*, 359 US 550 (1959) ..... 4 n. 3
Ohralik v *Ohio State Bar Ass'n*, 436 US 447 (1978) ..... 7 n. 9
Pennsylvania v *Minns*, 434 US 106 (1977) ..... 3 n. 2

Page

Pierce v *Society of Sisters*, 268 US 510 (1925) ..... 4 n. 4
Pruneyard Shopping Center v *Robins*, 447 US 74 (1980) ... 7
Republic Nat. Gas Co. v *Oklahoma*, 334 US 62 (1948) ..... 4 n. 3
Richmond Newspaper, Inc. v *Virginia*, 448 US 555 (1980) 7
Saltonstall v *Saltonstall*, 276 US 260 (1928) 7
Schroeder v *Lufthansa German Airlines*, 18 Aviation Cases (CCH) 17, 222 (N.D. Ill. Sept. 15, 1983) ..... 8 n. 10
Sullivan v *Kidd*, 254 US 433 (1921) ..... 1 n. 1
Sumitomo Shoji America, Inc. v *Avagliano*, 457 US 176 (1982) ..... 1 n. 1
Testa v *Katt*, 330 US 386 (1947) ..... 9 n. 12
Whitfield v *Ohio*, 297 US 431 (1936) ..... 5 n. 5

B. Constitution, Statutes and Rules

1. Constitution
   US Const., Art. VI, cl.2 ..... 9 n. 12
2. Statutes
   28 USC §1257(2) ..... 5, 7 & n. 9, 10
   28 USC §1257(3) 5
   28 USC §2103 8
3. Rules of the Supreme Court of the United States
   16.7 10

II. UNITED STATES TREATIES AND MEMORANDA

Convention on the Taking of Evidence Abroad In Civil or Commercial Matters, 28 USC §1781; 23 UST 2555; TIAS 7444 [referred to as the Hague Convention] ..... Passim
Notes Verbales, United States and the Federal Republic of Germany (1955, 1956, 1979, 1980) TIAS 9938 [referred to as the Notes Verbales or the Notes] ..... Passim

III. STATE LAW AND AUTHORITIES

A. Case Authority

Seaton v *State Farm Ins. Co.*, 75 Mich. App. 252; 254 N.W. 2d 858 (1977) ..... 6 n. 6
Wilson v *Stillman & Hoag, Inc.*, ___ Misc. 2d ___ ; 467 N.Y.S. 2d 764 (N.Y. Sup. Ct. 1983) ..... 8 n. 10

B. Court Rules *Page*

Michigan General Court Rules of 1963 ..... Passim
304.2 ..... 5 & n. 5

IV. MISCELLANEOUS AUTHORITIES

Comment, *Threat of Enforcement-Prerequisite of a Justiciable Controversy*, 62 Colum. L. Rev. 106 (1962) ..... 4 n. 4

P. Bator, D. Shapiro, P. Mishkin, H. Wechsler, *The Federal Courts & The Federal System* (2d. ed. 1973) ..... 4 n. 4

2 J. Honigman & C. Hawkins, *Michigan Court Rules Annotated* Rule 302.1, at 26-29 (2d. ed. 1963) ..... 6 n. 6

16 Wright, Miller, Cooper & Gressman, *Federal Practice & Procedure: Jurisdiction*
§4012 (1977) 10
§4013 (Cumm. Supp. 1982) 7

NO. 82-1888

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

VOLKSWAGENWERK AKTIENGESELLSCHAFT,
a Foreign Corporation,

Appellant,

vs.

JOSEPH and BARBARA J. FALZON, Individually and as Next Friend of JOSEPH D. FALZON, STEVEN FALZON, RODNEY FALZON and RAMON FALZON, minors,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

APPELLANT'S REPLY BRIEF TO A BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

I.
THE UNITED STATES UNDERSTANDING OF THE HAGUE CONVENTION AND THE NOTES VERBALES

The Brief of the United States unequivocally concludes that the orders of the Michigan trial court compelling depositions of German nationals in Germany are invalid and unauthorized under the Hague Convention and the Notes Verbales. These official representations — on matters of State and concerning international compacts — must be afforded deference[1]. Appellant is in accord with the Solicitor General as to these proposi-

[1] *Sumitomo Shoji America, Inc.* v *Avagliano*, 457 US 176, 184-85 (1982); *Kolovrat* v *Oregon*, 366 US 187, 194 (1961); *Factor* v *Laubenheimer*, 290 US 276, 295 (1933); *Sullivan* v *Kidd*, 254 US 433, 442 (1921); *Charlton* v *Kelly*, 229 US 447, 468 (1913).

tions. However, Appellant must dispute certain points made by the Solicitor General concerning judicial matters that are outside the executive ken.

II.
JURISDICTION AND "JUSTICABILITY"
A.
MOOTNESS AND RIPENESS

First, the United States, although not specifically articulating it as such, argues that this appeal is either moot, or not ripe for adjudication, or both; predicating such argument upon the following unspoken (and false) syllogism.

The trial court orders require enforcement by officers of the State Department; since this matter has come before the Court, the State Department has determined that in the future it will instruct Consular Officers in the Federal Republic of Germany not to conduct the ordered depositions; therefore, as the depositions cannot go forward before the officers, no danger to German sovereignty exists and the question presented is now insubstantial or nonexistent.

This understanding of mootness and insubstantiality is unsupported by any decision of this Court. The controversy between the parties is still very much alive, as are the state court orders. What the State Department submits it is going to do, or may do in the future alters neither.

Certainly, on the face of the Michigan orders there is no conclusive assurance that the State Department's future non-cooperation effectively moots this controversy. The Order of October 7, 1980, appears to contemplate American-style depositions by attorneys (and not questioning by U.S. Consular officials), except for the implied reference to consular officials which can be read into the provision that "the notes verbales will control the *course* of the taking of these depositions." (See Appendix 24a; emphasis added). In light of the repeated reference to *depositions* and the scheduling of same "at a time mutually convenient for both plaintiffs' and defendant's counsel,"

without any mention of consular officials, there is real doubt that the Wayne County Circuit Court, the Michigan Court of Appeals and the Michigan Supreme Court considered the U.S. Consulate to be a necessary participant in the proceedings. Again, the Wayne County Circuit Court Order of August 17, 1982 (Appendix 7a) directs the deponent to appear for *depositions* (not Consular questioning) in Wolfsburg, Germany, where there is no consular office. This August 17, 1982, Order is also the Order which threatens "appropriate sanctions" for failure to appear.

Even assuming that the State Department's laudable position is in fact implemented, no principle of law permits or empowers the State Department to set aside or vacate a state court order. The only effect of this Court's adopting the suggestion of the Solicitor General to dismiss the appeal — particularly in view of his own interpretation of the orders as vividly violative of the treaty and notes — would be to leave extant patently unlawful and unconstitutional orders. Indeed, merely because the State Department elects not to cooperate in enforcing these otherwise viable orders, does not mean they would be invalid or unenforceable. To the contrary, absent this Court's reversal, the orders continue to be valid, to be the law of the case and to be enforceable by the Michigan Courts. Certainly, the Solicitor General recognized this when he alluded to the threat of sanctions. *Amicus Curiae Brief* at 12. Such enforcement of still viable orders, absent intervention and invalidation by this Court, demonstrates conclusively that this matter is neither moot nor insubstantial, *FTC* v *Goodyear Tire & Rubber Co.*, 304 US 257, 259-60 (1938),[2] and requires the

[2]In *Goodyear*, this Court rejected a mootness challenge predicated upon discontinuance of a practice the FTC has ruled violated the Clayton Act, because, *inter alia*, the FTC's order was continuing, and absent review by this Court, the respondent could be subject to enforcement proceedings for disobeying that otherwise valid order. *See also Pennsylvania* v *Mimms*, 434 US 106, 108 n.3 (1977) (possibility of "collateral legal consequences" renders claim proper to be reviewed on the merits and not moot).

appeal be taken and the orders vacated.[3]

Correlatively, the Solicitor General's allusion to the absence of ripeness is as equally baffling and misplaced as are the mootness contentions. Surely, the anticipated actions of non-litigants cannot serve as a bar to justicability. Moreover, the threat of enforcement of the Orders by the Michigan Courts establishes, *a priori,* the ripeness of the controversy.[4]

---

[3]The Solicitor General argues (*Amicus Brief* at 12) that because no sanctions have been imposed by the trial court, this somehow inhibits review of the underlying orders admittedly invalid. Appellant knows of no proposition in law to support this contention — the *FTC* v *Goodyear Tire & Rubber Co.*, 304 US 257, case, for example, being to the contrary — and the cases cited are inapposite. *NAACP* v *Williams*, 359 US 550 (1959) involved an attempt to review by *certiorari* a contempt order, which by its own terms, was not final since the Georgia court explicitly reserved the power to reduce the amount of the fine. *Id.* at 551 (Douglas, J., concurring). The orders involved in this case, mandating that the depositions go forward in Germany, are final by their own terms. *See* J. S. at 2-3 n. 1 and Appellant's Brief in Opposition to Motion to Dismiss/Affirm at 5-7. Indeed, the Solicitor General does *not* dispute this, as he concedes *certiorari* jurisdiction. *Amicus Brief* at 3 n.1.

Similarly, in *Republic Nat. Gas. Co.* v *Oklahoma*, 334 US 62 (1948), the Court refused to review a state court order affirming an administrative agency ruling requiring Appellant to do business with a certain company but which, by its own terms, retained jurisdiction and left open the question of the terms and conditions of the Appellant's interactions with that company. By contrast, Judge Farmer's command (sustained by the Michigan Court of Appeals and the Michigan Supreme Court) that the depositions go forward on a compulsory basis is self-contained and internally final. The mere fact that sanctions are mentioned in the August 17, 1982 order (and nothing is said about sanctions in the order of October 7, 1980) does not somehow transform a final order or judgment into a non-final one. Every Court has the inherent authority to enforce its own orders absent a stay or reversal from a reviewing authority. The very fact that the trial court can impose sanctions for failure to comply with this unconstitutional order, clearly signals the need for this Court to vacate the order — as opposed to giving the Court a reason to refrain from hearing this appeal.

[4]*Lake Carriers' Ass'n* v *MacMullan*, 406 US 498, 508 n. 12 (1972); *Pierce* v *Society of Sisters*, 268 US 510, 535-36 (1925). *See also* Comment, *Threat of Enforcement-Prerequisite of a Justicable Controversy*, 62 Colum. L. Rev. 106 (1962); P. Bator, D. Shapiro, P. Mishkin, H. Wechsler, *The Federal Courts & The Federal System* 141-142 (2d. ed. 1973).

B.
§1257(2) JURISDICTION

Appellant vigorously contests the Solicitor General's argument that this matter is not properly before the Court on appeal under 28 USC §1257(2). Indeed, the United States does *not* dispute that the orders appealed from are final; rather it concedes the Court has *certiorari* jurisdiction under 28 USC §1257(3). *Amicus Brief* at 3 n.1. The Solicitor General then suggests that the Court dismiss the appeal because, it is contended, the Appellant never explicitly challenged, in the state courts, the validity of the Michigan Court Rules as applied. *Amicus Brief* at 3-4 n.1.

Certainly, *as a matter of fact,* this is not correct. As the Appellant has already noted (Appellant's Reply Brief Opposing Appellee's Motion to Dismiss or Affirm at 2,8), the trial court, in certifying an intra-state appeal, recognized that application of GCR 1963, 304.2 — which mandates local procedures for taking extra-territorial depositions — was expressly being challenged as invalid and violative of the Hague Evidence Convention.[5] In Michigan, the procedures for the taking of

[5]In certifying the appeal, the trial court characterized some of the questions as follows:

"1. Whether a Michigan Circuit Court Judge that has undisputed jurisdiction over the parties and subject matter can order defendant's (VWAG) employees or its former employees to submit to depositions in Germany, under oath and *in accordance with Michigan Practice and Procedure* (GCR 304.2) and Notes Verbales of 1955?

2. And whether or not the taking of *such* discovery depositions *would violate the Hague Treaty* (28 USC §1781), or is obtaining of such information and disclosures confined to Letters Rogatory?"

J. S. App. at 22a (emphasis supplied).

Also, in that certificate, the trial court expressly characterized the position of the Appellant as one challenging application of the Michigan General Court Rules when they were in conflict with international law, which of course, encompasses bilateral and international treaties:

"On August 13, 1980, defendant-appellant filed its reply to the plaintiffs-appellees' Memorandum and asserted the following:

. . . III. The Michigan General Court Rules control the course of discovery in the case at bar, *as long as the rules do not conflict with international law.*"

J. S. App. at 15a (emphasis supplied). *See also Whitfield* v *Ohio,* 297 US 431, 435-36 (1936).

depositions are governed *solely* by the Michigan General Court Rules,[6] as the references to the record demonstrate. At every stage of the proceedings,[7] Appellant explicitly claimed the Rules to be invalid, as applied. The following illustrative contention made before the Supreme Court of Michigan establishes this beyond peradventure:

> "[W]hile it is true that procedures governing the taking of discovery are matters within state control, to the extent that such procedures are inconsistent with the Hague Convention, they are invalid."[8]

---

[6]*See, e.g., Seaton* v *State Farm Ins. Co.*, 75 Mich. App. 252, 257-58 & n. 1; 254 N.W.2d 858, 860-61 & n. 1 (1977). *See also* 2 J. Honigman & C. Hawkins, *Michigan Court Rules Annotated* Rule 302.1, at 26-29 (2d ed. 1963).

[7]In further demonstration of the fact that the validity of Michigan Court Rules, as applied, was explicitly challenged, one need only peruse the questions presented by the Appellant in its papers seeking leave to appeal in the Michigan Court of Appeals. Two sub-parts (A & H) of but one of the several questions (No. 5) is illustrative:

> "5. That the questions presented in this appeal are of first impression and are of major legal significance to the jurisprudence of the State of Michigan, the jurisprudence of the United States, the International Legal Community, and the 'International Law of Nations' as follows:
>
> A). Whether a Michigan Circuit Judge may properly order, *in contravention of an existing treaty* (The Hague Convention), that depositions of twelve German nationals be conducted in Germany in accordance with *Michigan procedures*, which procedures are *materially inconsistent with the express provisions* for taking evidence abroad as set forth *in such Treaty?*
>
> . . .
>
> H). Whether the Order appealed from is improperly vague and ambiguous in that it states that ". . . *Michigan General Court Rules* control these proceedings as much as possible . . ." then further states that ". . . Notes Verbales of 1955 will control the course of the taking of these depositions," which contain provisions which *are inconsistent with* each other and which further ignores the applicable provisions of *the Hague Convention on The Taking of Evidence Abroad?*"

Record, Applications for Leave to Appeal to Michigan Court of Appeals dated December 26, 1980 at 3-4, March 13, 1982 at 3-4.

[8]Record, Brief in Support of Emergency Application for Leave to Appeal to the Supreme Court of Michigan dated June 7, 1982 at 3-4. (emphasis supplied)

Moreover, it is respectfully suggested that the Solicitor General reads, far too sensitively, *Richmond Newspapers, Inc.* v. *Virginia,* 448 US 555, 562-63 n.4 (1980) (plurality opinion); *Hanson* v. *Denkla,* 357 US 235, 244 & n.4 (1958); and *Charleston Fed. Sav. & Loan Ass'n* v. *Alderson,* 324 US 182, 185-87 (1945). For the Court to adopt and apply such a reading of those cases to the matter at bar would be to impose upon §1257(2) a semantic gloss requiring artificial recitation of magic phrases — a complete triumph of form over substance.[9] *See,* 16 Wright, Miller, Cooper & Gressman, *Federal Practice & Procedure: Jurisdiction* §4013, at 273 n.53 (Cumm. Supp. 1982). The requirement of challenge to the validity of a state law need not take on a specified form, as the United States suggests, and the decisions of this Court verify this diversity of means of challenge. *E.g., Pruneyard Shopping Center* v *Robins,* 447 US 74, 79-80 (1980); *Gomez* v *Perez,* 409 US 535, 537 & n.2 (1973); *Saltonstall* v *Saltonstall,* 276 US 260, 267-68 (1928). As the federal challenge to the application of the California ad valorem property tax — mandated by statute — in *Japan Line, Ltd.* v *City of Los Angeles,* 441 US 434, 440 (1979) was "squarely made" for §1257(2) purposes, Appellant's federal challenge to application of Michigan discovery procedures — mandated by Court Rules — was "squarely made" (and the validity of those rules was just as "squarely sustained" by the Michigan Courts), notwithstanding the Solicitor General's "unpersuasive recharacterization." *See, id.* at 440-41.

---

[9]Similarly, the contention of the United States is misplaced that "[t]his case, like virtually every case," involves the State Court's application of its rules, somehow does not involve a challenge to the validity of a state "statute" within the meaning of § 1257(2). This overlooks the repeated construction of § 1257(2) to include Court Rules within the definition of "statute". *E.g., Ohralik* v *Ohio State Bar Ass'n,* 436 US 447 (1978); *In Re Primus,* 436 US 412 (1978); *Bates* v *State Bar of Arizona,* 433 US 350 (1977); *In Re Griffiths,* 413 US 717 (1973); *Mayer* v *City of Chicago,* 404 US 189 (1971).

III.
THE ALTERNATIVE PETITION FOR CERTIORARI

Appellant alternatively urges that this Court is empowered to consider the papers as a petition for *certiorari*. 28 USC §2103. The grounds for such review are compelling. An important question is squarely before the Court. How should a multinational treaty — adopted to ease or eliminate friction between countries having very different legal systems and views about pre-trial discovery — be interpreted and implemented by the Courts of the United States and the several states? The record on this issue could not be more clear or complete. The Court not only knows, and has before it the views of the litigants and the state courts, but that of both contracting states — *i.e.* the United States and the Federal Republic of Germany. The matter is conspiciously ripe for determination.

The question is also of manifest concern to litigants and courts — state and federal — throughout the country since they must daily define proper parameters to extraterritorial discovery efforts. Inconsistent interpretations[10] presently abound. Unless those differing views are authoritatively corrected and harmonized by this Court, multiple applications for stays and for plenary consideration must surely increase. Indeed, the Supreme Court of Michigan has consistently refused to budge from its position, notwithstanding this

---

[10]*Compare, e.g.*, the Michigan Courts' parochialized view as expressed by the state trial judge in the orders appealed from J.S. at 7a-8a, 24a-25a, *with*, the recently articulated position of the Third Circuit concerning related matters in *Feliciano* v *Reliant Tooling Co.*, 691 F.2d 653, 657-58 (3d Cir. 1982). *See also* the pending Jurisdictional Statement and related papers in *Club Mediterranee S.A.* v *Dorin, appeal filed*, 52 U.S.L.W. 3210 (U.S. Sept. 16, 1983) (No. 83-461) (Stay entered July 21, 1983, O.T. 1982, No. A-28). *See also Wilson* v *Stillman & Hoag, Inc.*, ___ Misc. 2d ___; 467 N.Y.S. 2d 764 (N.Y. Sup. Ct. 1983); *Schroeder* v *Lufthansa German Airlines*, 18 Aviation Cases (CCH) 17,222 (N.D. Ill. Sept. 15, 1983); and *Lasky* v *Continental Products Corp.*, 569 F. Supp. 1227 (E.D. Pa. 1983).

Court's having twice granted extraordinary relief.[11] (Nor is there any demonstrable reason to suggest that the Michigan Supreme Court will treat the State Department's expressed intention to act with any greater deference than it did THE CHIEF JUSTICE'S and JUSTICE O'CONNOR'S invitations to resolve this issue).

CONCLUSION

The Solicitor General's conclusion that the state court orders plainly and unconstitutionally violate the Hague Convention is reason enough for this Court to grant relief. His implication, however, that this Court's caseload may preclude review of this matter is ill-advised. It must be remembered that this case would never have reached this Court, if *any* of the Courts of Michigan had performed their fundamental obligation under our social compact to enforce the Constitution, treaties and laws of the United States.[12] The fact remains that they did not perform those basic tasks within their charge and, given this record, there is no indication that they will ever voluntarily do so. Moreover, as demonstrated by this matter and yet another presently pending in this Court (*Club Mediterranee, S.A.* v *Dorin*, No. 83-461. [Stay by THE CHIEF JUSTICE, O.T. 1982, No. A-28]), as well as the conflicting holdings of courts throughout the country, this issue is most likely to recur; resulting in multiple appeals, increased applications for stay and further intrusions upon this Court's time.

---

[11]J. S. at 1a-2a, where the Supreme Court of Michigan refused to hear the appeal from Judge Farmer's Orders *after* THE CHIEF JUSTICE had stayed the depositions, J. S. at 30a-31a. *See also* Record, May 19, 1983 Order of Supreme Court of Michigan refusing to stay proceedings pending appeal to this Court *after* JUSTICE O'CONNOR had entered a second stay, but which — out of deference to the Justices on that Court — was only to be operative until they acted upon the stay before them. J. S. at 31a-34a. This necessitated entry of yet another stay by JUSTICE O'CONNOR pending this Court's disposition of the appeal. *Volkswagenwerk A.G.* v *Falzon*, No. A-956 (82-1888), O.T. 1982 (Order of May 26, 1983).

[12]U.S. Const. Art. VI, cl. 2. *See, e.g., Testa* v *Katt*, 330 US 386, 393 (1947); *Minneapolis & St. L.R.R.* v *Bombolis*, 241 US 211, 222 (1916); *Clafin* v *Houseman*, 93 US 130, 137 (1876).

Certainly, now that the two governments involved have unequivocally spoken and in view of the clarity of the record herein, this matter can be expeditiously remedied through summary reversal under Rule 16.7 without inordinate consumption of the Court's time. In no event, however, should the refusal of the Michigan Courts to give force and effect to an extant treaty and other diplomatic obligations of the United States, and the corollary elevation of Michigan Court Rules above those obligations, be either approved or condoned — if even by abstention — given that the primary rationale underlying Congress' mandate that this Court assume obligatory jurisdiction under 28 USC §1257(2) is the specific inhibition of just such state action. *See, John P. King Mfg. Co.* v *City Council of Augusta,* 277 US 100, 103-04 (1928). 16 Wright, Miller, Cooper & Gressman, *Federal Practice & Procedure: Jurisdiction* §4012, at 603-605 (1977).

Respectfully submitted,
BUSHNELL, GAGE, DOCTOROFF
& REIZEN
By: George E. Bushnell, Jr.
(Counsel of Record)
Attorneys for Appellant,
Volkswagenwerk Aktiengesellschaft
3000 Town Center, Suite 1500
Southfield, Michigan 48075
(313) 444-4848

Of Counsel:
HERZFELD & RUBIN, P.C.
Herbert Rubin
Michael Hoenig
Ian Ceresney
C. Thomas Schweizer

Dated: February 2, 1984